

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

November 6, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-2363

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF: DAVID G. PAESKE,

PETITIONER-APPELLANT,

V.

JOANELL W. PAESKE,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Grant County:
JOHN R. WAGNER, Judge. *Affirmed in part; reversed in part and cause remanded.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. David Paeske appeals from a judgment divorcing him from Joannell Paeske. He raises numerous issues regarding the trial court's property and maintenance awards. We reverse and remand for re-examination of the duration of the maintenance ordered, the division of David's pensions, and the

requirement that David pay Joanell a \$29,000 equalization payment within sixty days, assuming the latter issue is not moot. We otherwise affirm.

The parties were married for sixteen years and had no children. At the time of the divorce, each was over fifty and in good health. The parties' most recent tax returns showed an adjusted gross income of \$33,125 for David, including wages as an electrical lineman and unemployment compensation. Joanell reported \$12,327 as a part-time nursing assistant.

An item of property in dispute was a toy collection David accumulated during the marriage at a cost of some \$6,000. He testified that he sold most of the collection shortly after the parties separated in 1993, retaining only \$400 worth of items. However, he was unable to provide the names of any buyers, the sale price or specific dates of sale for the toys, although he had previously kept meticulous records of his toy transactions. Additionally, he admitted telling Joanell that he had transferred the toys to another individual, presumably to remove them from the property division. Joanell valued the intact collection at \$20,000.

The other major issue was Joanell's claim for maintenance. Also in dispute was whether property brought to the marriage by David, in the form of accrued pension value, should be divided equally.

The trial court assigned David's toy collection a \$20,000 value and awarded it to him. The court also divided the pensions equally without regard to their premarital value. David received the parties' other major asset, the home equity, resulting in an order requiring him to pay Joanell \$29,800 within sixty days, in order to equalize the property division.

On Joanell's maintenance claim, the trial court found that she was unlikely to become self-supporting at the standard of living she enjoyed during the marriage, during which time the court found the parties average income to be \$45,000 per year. Based on that fact, the parties' income disparity, and the length of the marriage, the court awarded her \$200 per week for sixteen years, or until she was sixty-six and David seventy.

The issues on appeal are whether the trial court properly allowed Joanell to testify to the value of David's toy collection; whether the court properly valued the collection at \$20,000; whether the court should have allowed David to testify to the value of Joanell's horse, saddle, trailer and truck; whether the court misused its discretion by ordering David to make the equalization payment within sixty days of its decision; whether the court should have credited David with the premarital accrued pension value; whether the maintenance award was a proper exercise of discretion; and whether the case should be retried in the interest of justice.

Marital property and maintenance awards are matters for the trial court's discretion. *Haugan v. Haugan*, 117 Wis.2d 200, 215, 343 N.W.2d 796, 804 (1984). We affirm discretionary awards if the trial court articulates its reasoning, bases the awards on facts of record and the correct legal standards, and the awards are neither excessive nor inadequate. *Id.* at 215-16, 343 N.W.2d at 804. In awarding maintenance, the trial court must consider the standards set forth in § 767.26, STATS., and must apply them to provide support for a dependent spouse and to ensure a fair, equitable and financial arrangement between the parties. *LaRocque v. LaRocque*, 139 Wis.2d 23, 31-33, 406 N.W.2d 736, 739-40 (1987). In a long marriage such as this one, the court should begin with a proposition that an equal division of income is appropriate, regardless of need. *Id.*

at 39, 406 N.W.2d at 742. In dividing property, the court must also presume an equal division, but may alter the distribution after considering, among other things, the property each party brings to the marriage. Section 767.255(3)(b), STATS. The trial court's ruling on evidentiary matters are also discretionary. *In re Michael R.B.*, 175 Wis2d 713, 720, 499 N.W.2d 641, 644 (1993).

The trial court properly allowed Joanell to testify as to the value of David's toy collection. Joanell reported that David frequently discussed the toy valuations with her, that she accompanied him on toy-buying expeditions, and examined printed material concerning the value of toys. The trial court therefore reasonably allowed her to price the toys given her reported knowledge base. Additionally, the owner of property is always deemed competent to give opinion evidence as to its value. *Wilberscheid v. Wilberscheid*, 77 Wis.2d 40, 48, 252 N.W.2d 76, 81 (1977).

The trial court reasonably valued the collection at \$20,000. Joanell's opinion was the only evidence of the present value of the intact collection. By valuing it as such, the trial court implicitly deemed not credible David's testimony that he sold it. The trial court's determinations on the weight and credibility of the evidence are not subject to review. *Rubi v. Paige*, 139 Wis.2d 300, 308, 407 N.W.2d 323, 326 (Ct. App. 1987).

The court allowed David to testify as to the value of Joanell's horse, saddle, trailer and truck. The problem for David was the trial court's refusal to accept that valuation. David can hardly take issue with that ruling given his admission that he was "not that familiar with horse-related items," and his failure to provide any basis for his estimate of the truck's value.

The court erroneously exercised its discretion by requiring David to make the equalization payment within sixty days. Even if David retained the toy collection, there is no evidence that he could raise \$29,800 in that brief amount of time, either by selling assets or borrowing against them. On remand, if the issue is not moot, the trial court shall allow David a reasonable amount of time to equalize the property division, given the absence of any substantial liquid assets.

We also remand for further consideration on David's claim for exclusion of the premarital value of his pensions. The trial court gave no reason for its decision to deny David's claim, although the matter was litigated and evidence was presented on the issue. We can only speculate as to whether the trial court deliberately but implicitly denied the claim, or perhaps overlooked it. In any event, further consideration and an articulated decision is necessary.

The trial court properly awarded Joanell \$200 per week maintenance. The economic disparity between the parties was substantial, and \$200 per week approximates an equal division of the parties' income, which is an appropriate factor to consider. See *LaRocque*, 139 Wis.2d at 39, 406 N.W.2d at 742. Additionally, Joanell had no immediate prospects of improving her situation. David cannot reasonably contend that the trial court should have considered support Joanell receives from her live-in boyfriend, because David also receives support from his live-in girlfriend.

The trial court erroneously exercised its discretion, however, in awarding maintenance for sixteen years. The record does not disclose how the sixteen-year term of maintenance pertains to the financial status of the parties. Two hundred dollars per week is plainly beyond David's ability to pay once he is retired, and there is no showing that he will be able to continue his present

employment until he is seventy years old. Additionally, Joannell worked full time until 1990, and testified that she hopes to work full time in the future. It was therefore unreasonable to conclude that Joannell's present need, and inability to find full-time work, would continue for sixteen years. As David suggests, the only basis in the record for a sixteen-year award appears to be the fact that the marriage lasted for sixteen years. That is not a reasonable calculation of maintenance.

The divorce need not be retried in the interest of justice. David argues that it should be because he did not receive effective assistance from his attorney. However, regardless of the quality of David's counsel, it appears that the matter was fairly tried with the exceptions noted in this opinion. The property was otherwise fairly valued and divided, and an appropriate amount of maintenance awarded. Justice does not require a retrial. No costs are awarded to either party.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

